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1	Dee An Gillespie (#009987)	
2	GILLESPIE, SHIELDS & DURRANT, P.L.C. 7319 North 16 th Street, Suite 100	
3	Phoenix, Arizona 85020 Telephone: (602) 870-9700	
4	Fax: (602) 870-9783 Attorneys for Plaintiffs	
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6	IN THE UNITED STATES	DISTRICT COURT
7	FOR THE DISTRICT OF ARIZONA	
8	Joe And Misun Gillespie, husband and wife,	No
9	Plaintiffs,) No.
10	v.	COMPLAINT
11	J.R. Brothers Financial, Inc.; an Arizona	JURY TRIAL DEMANDED
12	corporation; Arrowhead Anesthesia Physicians, P.C. , an Arizona corporation; Dr.)))
13	Paul D. Montanarella And Jane Doe Montanarella; husband and wife; John And))
14	Jane Does I-V, husband and wife; Black And White Business Entities I-V, corporations.))
15))
16	Defendants.))
17	Plaintiffs Joe and Misun Gillspie, ("Plain	tiffs"), for their Complaint against
18	Defendants, allege as follows:	
19	PARTIES, JURISDICT	ION AND VENUE
20	Plaintiffs JOE GILLESPIE and M.	ISUN GILLESPIE, husband and wife,
21	reside in Maricopa County, Arizona.	
22	2. Defendant J.R. BROTHERS FINA	ANCIAL, INC., ("J.R. BROTHERS") is
23	an Arizona Corporation doing business as a debt	collection agency in Maricopa County,
24	Arizona.	
25	3. Defendant ARROWHEAD ANES	THESIA PHYSICIANS, P.C.,
26	("ARROWHEAD") is an Arizona Professional (Corporation doing business in Maricopa
27	County, Arizona as a health care provider of ane	
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- 4. Defendant PAUL D. MONTANARELLA ("DR. MONTANARELLA") is an Arizona anesthesiologist practicing in Maricopa County, Arizona and is the owner and also an officer and director of ARROWHEAD. The acts of DR. MONTANARELLA were for the benefit of and bind the marital community of DR. MONTANARELLA and JANE DOE MONTANARELLA. As soon as Plaintiffs ascertain the true identity of JANE DOE MONTANARELLA, Plaintiffs will move to Amend this Complaint to include her true name.
- 5. JOHN and JANE DOES I-V and BLACK and WHITE business entities I-V, are individuals or business entities whose true identities are unknown to Plaintiffs at this time but who are liable for the acts alleged in this Complaint. Once Plaintiffs identify these Defendants, leave of Court will be sought to add them by name.
- 6. This action is brought under 15 U.S.C. § 1681 et seq., the Fair Credit Reporting Act ("FCRA") and The Truth In Lending Act, 15 U.S.C. § 1601 *et seq*. ("TILA") Jurisdiction of this Court over this action and the parties hereto is based on Federal statutes, including the TILA and 15 U.S.C. § 1681p (FCRA). Venue lies in the Phoenix Division of the District of Arizona where Plaintiff lives and where the claims arose from acts of Defendants. Plaintiffs also include claims under the Arizona Fair Credit Reporting Act, ARS § 44-1591 *et. seq.* and common law claims.

GENERAL ALLEGATIONS

- 7. Plaintiffs incorporate by reference all allegations in this Complaint as if fully set forth herein.
- 8. On April 8, 2008, Plaintiff JOE GILLESPIE suffered a medical emergency and was admitted to the emergency room and then the Intensive Care Unit at John C. Lincoln Hospital.
- 9. ARROWHEAD, through the work of DR. MONTANARELLA, intubated Plaintiff JOE GILLESPIE's and put him on a ventilator.

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disputed it.

Plaintiff JOE GILLESPIE never received verification of the debt after he

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- 21. In August of 2011, Plaintiffs received a letter from Humana in the form of an Explanation of Benefits informing Plaintiffs that it had paid the bill from ARROWHEAD.
- 22. In September of 2011, Plaintiff JOE GILLESPIE contacted ARROWHEAD and ARROWHEAD verified that its bill had been paid in full and no outstanding amounts were owed. ARROWHEAD told JOE GILLESPIE that the debt should have been recalled from collection sometime ago and they would recall it again. ARROWHEAD thereafter sent Plaintiff a copy of a statement showing a zero balance.
- 23. JOE GILLESPIE thereafter disputed the debt through the credit reporting agencies' online dispute process.
- 24. J.R. BROTHERS received notice of this dispute from the credit reporting agencies.
- 25. In October 2011, despite ARROWHEAD having been paid and this debt having been supposedly recalled from collection by ARROWHEAD, Defendant J.R. BROTHERS reported to the credit reporting agencies that J.R. BROTHERS reconfirmed the ARROWHEAD debt and that it was a valid debt.
- In October 2011, J.R. BROTHERS sent Plaintiff JOE GILLESPIE another 26. dunning letter to which Plaintiff responded in frustration that the debt was not valid, he did not owe the debt and not to contact him again.
- 27. In addition, around this same time period of October 2011, Defendant J.R. BROTHERS reported and added this alleged debt to Plaintiff MISUN GILLESPIE's credit report indicating it was an unpaid debt after it had been paid in full and J.R.BROTHERS had been given specific notice many times that there was no debt to collect.
- 28. Plaintiff MISUN GILLESPIE never received notice from Defendant J.R. BROTHERS or ARROWHEAD that this adverse credit item had been reported on her credit report.

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27 28 alleged debt had been reported on her credit report and Plaintiffs disputed the item with Defendant J.R. BROTHERS financial and the credit reporting agency. 30. In March of 2012, Plaintiff JOE GILLESPIE again contacted

In March of 2012, Plaintiff MISUN GILLESPIE discovered that this

- ARROWHEAD and ARROWHEAD informed JOE GILLESPIE that the debt had been recalled from collection "some time ago" and that there was a zero balance owing.
- 31. ARROWHEAD continued to have its agent, J.R. BROTHERS seek to collect on this debt despite that it had been paid because ARROWHEAD failed to take effective action to ensure that its agent, J.R. BROTHERS, ceased collection activities on this debt.
- 32. Without conducting any reasonable investigation, Defendant J.R. BROTHERS reconfirmed the ARROWHEAD debt as a valid debt with the credit reporting agencies.
- 33. On approximately March 20, 2012, ARROWHEAD faxed to JOE GILLESPIE a statement showing that the full payment had been made to ARROWHEAD in early September of 2011.
 - 34. In the Spring of 2012, Plaintiffs were in the process of purchasing a home.
- 35. Because of the incorrect and invalid debt to ARROWHEAD that was reported and not reasonably investigated or removed by J.R. BROTHERS on Plaintiffs' credit reports, Plaintiffs were turned down for a required pregualification letter and also had several offers on homes rejected because Plaintiffs were unable to obtain conventional financing and were only able to obtain FHA financing.
- 36. The adverse credit report significantly delayed Plaintiff's home purchase and occurred at a time when home prices in the North Central Phoenix area were rapidly rising.
- 37. Plaintiffs could have purchased a home for price that was much less than what they ended up with because of delays caused by the incorrect and adverse debt reported by J.R. BROTHERS to credit reporting agencies.

38. In addi	tion, when Plaintiffs did purchase a home, they were not able to	
qualify for the best in	nterest rate and had to pay a higher interest rate of 4.25% because of	
the drop in Plaintiffs' credit score due to this improper debt reported by J.R.		
BROTHERS.		

- 39. Plaintiffs have suffered mental anguish, emotional distress (resulting in health problems for Plaintiff JOE GILLESPIE) as a result of Defendants' actions.
 - 40. Defendants' actions were willful, wanton, and malicious.
- 41. On information and belief, DR. MONTANARELLA is liable for the tortious acts of ARROWHEAD as described herein given that he either authorized or participated in the wrongful and/or tortious conduct of ARROWHEAD and/or ARROWHEAD is the alter ego of DR. MONTANARELLA sufficient to pierce the corporate veil.

COUNT I

VIOLATION OF FAIR CREDIT REPORTING ACT

(Against Defendant J.R. Brothers Financial, Inc.)

- 42. Plaintiffs reallege all allegations in this Complaint as if fully stated herein.
- 43. J.R. BROTHERS violated the Fair Credit Reporting Act ("FCRA") when it failed to conduct a reasonable investigation with respect to the ARROWHEAD debt after receiving notice that Plaintiffs disputed the debt as required by 15 U.S.C. § 1681 s-2(b).
- 44. J.R. BROTHERS violated the FCRA when it failed to report to the debt collection agencies that the information provided was inaccurate; when it failed to delete the debt with the consumer reporting agencies, and when it failed to permanently block the reporting of the Arrowhead debt as required by 15 U.S.C. § 1681 s-2(b).
- 45. J.R. BROTHERS' violation of the FCRA was both willful and negligent pursuant to 15 U.S.C. § 1681n and 15 U.S.C. § 1681o.
- 46. As a result of J.R. BROTHERS' violation of the FCRA, Plaintiffs have been significantly damaged.

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collection activities on this debt and would not report to credit reporting agencies that

Plaintiffs owed this debt after the debt had been paid.

- 57. Defendants DR. MONTANARELLA and ARROWHEAD breached this duty when, after the bill was paid by Humana, they failed to make sure that its agent J.R. BROTHERS ceased collection activities and ceased reporting that the debt was owed to credit reporting agencies.
- 58. All of the Defendants had a duty to Plaintiffs that they would not wrongfully seek collections on an invalid debt against Plaintiffs and that they would not report wrongful, inaccurate, and false information about any debt allegedly owed by Plaintiffs to each other or to any debt collection agency.
- 59. Defendants negligently breached this duty by wrongfully seeking collections against an invalid debt and by wrongfully, maliciously, and willfully reporting false and inaccurate information about Plaintiffs' alleged debt to debt collection agencies.
- 60. As a direct and proximate result of Defendants' negligence and willful and malicious actions, Plaintiffs have been damaged in an amount to be proven at trial which damages are set forth in paragraphs 48 through 51 of this Complaint.
- 61. Punitive damages are justified given the willful, wanton, and malicious nature of Defendants' conduct.

COUNT III

DEFAMATION

(Against all Defendants)

- 62. Plaintiffs reallege all allegations in this Complaint as if fully stated herein.
- 63. Defendants have published false information about Plaintiffs that has brought Plaintiffs into disrepute, contempt, or ridicule and which has impeached Plaintiffs' honesty, integrity, virtue, and reputation.
- 64. Defendants have published false information about Plaintiffs knowing that the statements were false and that they were defamatory; or acting with reckless disregard as to the published information; or acting negligently in failing to ascertain that these publications were false.

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herein.

1	74. Defendants were grossly negligent in reporting and refusing to correct their	
2	erroneous reporting of Plaintiffs' credit as required by ARS § 12-1694.	
3	75. Defendants are liable to Plaintiffs under ARS §§1694 and 1695 for	
4	compensatory and punitive damages incurred by Plaintiffs as the result of their grossly	
5	negligent behavior, reasonable attorneys fees and court costs.	
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7	WHEREFORE, Plaintiffs pray for judgment against Defendants DR. PAUL D.	
8	MONTANARELLA and JANE DOE MONTANATRELLA, ARROWHEAD	
9	ANESTHESIA PHYSICIANS, P.C., and J.R. BROTHERS FINANCIAL, INC. as	
10	follows:	
11	a. Compensatory damages in an amount to be proven at trial, but no	
12	less than \$224,000.	
13	b. Punitive damages in an amount to be found by the trier of facts, but	
14	which should be in an amount that will discourage others from similar chicanery;	
15	c. An award of costs and reasonable attorneys' fees;	
16	d. For such other and further relief as this Court deems just and	
17	appropriate.	
18	DATED this 14 th day of August, 2013.	
19	GILLESPIE, SHIELDS & DURRANT	
20	/s/ Dan M. Durrant	
21	Dan M. Durrant	
22	DeeAn Gillespie 7319 North 16 th Street, Suite 100 Phoenix, Arizona 85020	
23	Attorneys for Plaintiffs	
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